



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

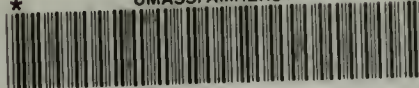
(617) 727-8352

(800) 462-OCPF

MARY F. McTIGUE
DIRECTOR

OCPF-IB-92-01
June 15, 1992

UMASS/AMHERST



312066 0272 9268 9

INTERPRETATIVE BULLETIN

The Application of the Campaign Finance Laws
to Public Employees and Political Solicitation

This interpretative bulletin will serve to provide guidelines for public employees who are asked to participate as a speaker or member of a panel at a forum, luncheon or other event held by a political committee or an organization other than a political committee. This bulletin will also provide guidelines for political committees or such organizations sponsoring such events.

I. General Discussion

M.G.L. c.55, s.13 prohibits political fundraising by certain public employees. Specifically, section 13 provides, in pertinent part:

No person employed for compensation¹, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever . . . (emphasis added)

1. OCPF has advised that a "person employed for compensation" includes both full-time and part-time employees who receive any amount of compensation. However, persons serving on boards or commissions who are reimbursed only for actual expenses incurred such as expenses for parking, transportation and the like are not considered to be "employed for compensation." In addition, persons who are reimbursed for expenses on a "per diem" basis are not considered to be "employed for compensation" only if the per diem rate reasonably reflects actual expenses. See OCPF-IB-91-01 at page 7, footnote 5. In this interpretative bulletin, the phrase "public employee" will be used to refer to a "person employed for compensation" by any city, town, county or state government agency, commission or department.

Section 13's prohibition includes not only solicitation and receipt of a "contribution," a term which itself is broadly defined by the campaign finance laws, but also solicitation and receipt of things of value not expressly included in the definition of contribution such as a "promise of money" and "assessments." In addition, the prohibition applies to both direct and indirect solicitation (discussed in greater detail below) as well as direct and indirect receipt.

As a general rule, criminal statutes and statutes which implicate First Amendment freedoms are narrowly construed. See Weld for Governor v. OCPF, 407 Mass. 761, 556 N.E. 21 (1990). However, while an overly broad construction may lead to constitutional problems, an overly narrow construction would substantially undercut section 13's fundamental purpose.

While the sweep of section 13's prohibition is broad, broader prohibitions on public employee political activities have been upheld by the U.S. Supreme Court. See Civil Service Commission v. Nat'l Ass'n of Letter Carriers, 413 U.S. 548 (1973) and Broderick v. Oklahoma, 413 U.S. 601 (1973). In addition, too narrow a construction would defeat the statute's purposes. Such prohibitions "serve valid and important state interests, particularly with respect to attracting greater numbers of qualified people by insuring their job security, free from the vicissitudes of the elective process, and by protecting them from 'political extortion'." Broderick, 413 U.S. 601, 606.

The Supreme Judicial Court has also noted that section 13 (as well as other provisions of the campaign finance laws) demonstrates a "general legislative intent to keep political fund raising and disbursing out of the hands [literally and figuratively] of nonelective public employees" See Anderson v. City of Boston, 376 Mass. 178, 186-187, 380 N.E. 2nd 628 (1978), appeal dismissed, 439 U.S. 1060 (1979).

Since 1982, OCPF has issued a number of advisory opinions on specific situations involving section 13's prohibitions on public employee political activity. In general, these opinions seek to implement the restrictions imposed by section 13 consistent with constitutional limitations as well as the judicially recognized policy considerations as noted above which underlie the statute. Within the context of public employees' participation in speaking engagements, it is important for the public employee to take reasonable care that such participation does not constitute an "indirect solicitation" of funds which are to be used for "political purposes."

A. Indirect Solicitation

Section 13 prohibits a public employee from indirectly

soliciting monies for political purposes. Of course, section 13 also prohibits direct solicitation (e.g., asking a friend, neighbor or fellow public employee to make a contribution to a candidate or political committee).

Section 13's prohibition against political solicitation does not prohibit public employees from attending and speaking about non-fundraising matters at a political fundraising event. Public employees may also introduce a candidate provided he or she does not "actively solicit contributions for such candidate as part of such introduction." See AO-90-28.

However, public employees should refrain from any activity which indicates support in a material way for the fundraising efforts of a candidate or political committee or for other political purposes (discussed in I(B) below). For example, public employees may not permit their names to be listed on political committee stationery as officers or members if such stationery is to be used to solicit funds for the political committee (AO-84-02), public employees are prohibited from hosting or permitting a political fundraising party at their homes (AO-84-06), a public employee may not be the featured speaker at a political fundraising event (AO-90-04), and a public employee may not be the featured speaker or serve on a panel at any event if he or she knows or has reason to know that the fact of his or her participation as a speaker or panelist at such event has or will be used by a political committee or organization for political fundraising purposes (AO-91-25).

B. Political Purposes

Indirect solicitation within the context of section 13 is prohibited only if the solicitation is for monies or other things of value "for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever . . ." ² As noted above, the phrase "for any political purpose whatever" broadens the scope of section 13. Therefore, organizations which are not political committees can still have a political purpose. See AO-91-12 and AO-87-27 advising a redistricting task force organized by members of a political party seeking to support a partisan redistricting effort not to accept corporate contributions.

2. It should be noted that solicitation by public employees for non-political (as well as political) purposes is prohibited in certain situations by the conflict-of-interest law. See, in particular, M.G.L. c.268A, s.23(b)(2). Questions regarding non-political solicitation should be directed to the State Ethics Commission at 727-0060.

The phrase "for any political purpose whatever" is not without limits. For example, OCPF has advised that the word "political" within the meaning of section 13 does not include the activities of various organizations whose activities are more humanitarian or civic, rather than political, in nature. Consistent with this interpretation, OCPF has concluded that public employees may solicit funds for organizations such as Oxfam America (AO-85-09), Amnesty International (AO-85-17), International Physicians for the Prevention of Nuclear War (AO-86-03), the Berkshire Advisory Council of the Massachusetts Commission Against Discrimination (AO-87-06) and Women's Statewide Legislative Network of Massachusetts (AO-90-11).

It has also been OCPF's opinion that legislative lobbying is not a "political" activity for purposes of M.G.L. c.55.³ In fact, expenditures for lobbying made by political committees organized under M.G.L. c.55 are expressly prohibited by regulation. See 970 CMR 2.06(6)(b)(3). It logically follows, of course, that if public employees may directly solicit funds for such purposes as those noted above, they may indirectly solicit funds for such purposes as well.

In conclusion, there are three factors which must be present in order for a public employee to have violated M.G.L. c.55, s.13's prohibition against indirect solicitation in the manner discussed. First, the public employee must have indirectly solicited monies. Second, the purpose of the solicitation must have been political. Finally, the public employee must have participated in some material way in the indirect solicitation of money for a political purpose. The relationship and importance of these three factors with regard to M.G.L. c.55 is more clearly understood by considering the specific examples set forth in the following section.

II. Categories and Examples

For purposes of determining the appropriateness of a public employee accepting speaking engagements, it is important to distinguish three types of organizations. They are (a) political committees or organizations whose primary purpose is political, (b) organizations whose primary purpose is civic

3. If the activities of such civic, humanitarian or lobbying organization extend to direct or active support of one or more candidates or for support of or opposition to questions appearing on the state or local ballot, such activities may become "political" rather than "civic" or "humanitarian." See AO-90-11. In addition, such organizations may, by virtue of such activity, become political committees and would be required thereby to register with OCPF or the appropriate city or town clerk or board of election commissioners.

or humanitarian and which make no political contributions and (c) organizations whose primary purpose is civic or humanitarian and which make political contributions. This section of the interpretative bulletin sets forth common examples within each organizational category.

A. Political Committees or Organizations

Example A1: A mayoral candidate's political committee wishes to hold a dinner reception at a local restaurant featuring a public employee as speaker. An invitation announcing the reception and identifying the speaker is mailed to 100 political supporters. No funds are solicited for the political committee in the invitation or at the reception.

Since no funds are being directly solicited by the political committee, the public employee attending as the featured speaker would not be indirectly soliciting funds for political purposes. This conclusion would be true even if the invitation noted that participants were to pay the restaurant directly for dinner. However, if the invitation identifying the public employee also asked for a contribution to the political committee, the public employee's knowing consent to the invitation and participation as featured speaker would constitute an indirect solicitation for political purposes in violation of section 13.

Example A2: A candidate's political committee wishes to organize an honorary group of supporters or club. To join, supporters must contribute \$500 each year. Membership is solicited by a letter noting that members will be invited to regular gatherings to meet with public employees who have agreed to serve on panels at each meeting. No funds are solicited at the meetings.

A public employee who has knowledge of the club's purpose and agrees to serve on one of the panels would be in violation of section 13 since his or her participation is being used by the political committee to encourage supporters to make a political contribution to the candidate's political committee. The fact that the political fundraising occurs prior to the event through membership dues does not make the dues paid any less of a "contribution" or the meeting any less of a political fundraiser since the dues are being paid to a candidate's political committee. See M.G.L. c.55, s.1 and AO-91-25.

Example A3: A task force is set up by membership of a state party to raise money for computer equipment and programming and potential legal costs relative to state legislative redistricting in an effort to seek legislative districts more favorable to its party members. The task force chairman writes a letter inviting party members to a forum on

redistricting. Contributions to the task force are requested and a public employee is noted as a featured speaker.

Although the task force is not a political committee, its purposes are primarily "political" rather than civic or humanitarian. This is because of the partisan nature of the task force's composition as well as its purposes. Such activity would, in OCPF's opinion, be "political" for purposes of M.G.L. c.55. See AO-91-12 advising that a redistricting task force was not a political committee but nonetheless could not receive contributions from corporations. Therefore, a public employee's knowing participation in the solicitation effort would be in violation of section 13.

Example A4: An educational association invites a cabinet secretary to speak at their annual convention. The secretary is announced in the flier. From those attending the convention, the association later solicits funds for their so-called PAC.

If the association actually solicits funds for the affiliated PAC or any other political committee, it is as a matter of law operating as a political committee and must register prior to such solicitation in order to comply with M.G.L. c.55, s.5. See footnote 1 at page 1. However, the association may make an in-kind contribution to the affiliated PAC or any other political committee of its membership list which that political committee may use for fundraising purposes provided that the political committee may not use the fact of the secretary's participation at the annual convention as an inducement for making contributions to the political committee. Even if this occurred, the secretary would not be in violation of section 13 unless he or she knew of the association's and/or PAC's plan to use his or her participation at the annual convention as an inducement to its subsequent fundraising efforts.

B. Civic Organizations/No Political Contributions

Example B1: A non-profit corporation supported by membership dues promotes multi-cultural education in Massachusetts public schools. Its activities include conducting various educational programs as well as lobbying for legislation regarding drug abuse. It does not support or oppose any candidates or ballot questions or make other political contributions or expenditures. It is holding an annual meeting which features a public employee as the key note speaker. An invitation is sent to members identifying the speaker and soliciting its members' annual dues.

The public employee is not in violation of section 13 since the corporation's purpose is primarily humanitarian or civic. Therefore, even though the public employee's participation

would constitute an indirect solicitation, it is not an indirect solicitation for "political" purposes. Even if the corporation makes incidental political contributions⁴ to candidates or committees, the public employee may still participate as the key note speaker without violating section 13 unless there is a material connection between the public employee's participation, the indirect solicitation and the political purpose. For example, the situation would be different if the invitation to the annual meeting indicated that part or all of the relevant year's membership dues would be used to support certain candidates or classes of candidates. In this case, the public employee would be indirectly soliciting funds for political purposes in violation of section 13 if he or she agreed to be the key note speaker knowing the nature of the invitation.

C. Civic Organizations/Making Political Contributions

Example C1: A construction trade association wants to have an assistant attorney general speak to their membership about recently enacted legislation. They send out a notice stating that the public employee will be the speaker at the next quarterly meeting. A portion of the dues for the organization is used for lobbying.

In this instance, the public employee would not have violated M.G.L. c.55, s.13. The trade association is concerned primarily with improving the construction industry in Massachusetts, a non-political purpose under M.G.L. chapter 55. Lobbying, as noted on page 4 herein is not considered "political" for purposes of chapter 55. Even if an incidental portion of its dues are used for opposing a ballot question,

4. M.G.L. c.55, s.1 defines political committee as "any committee, association, organization, or other group of persons, including a national, regional, state, county or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates . . . or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters." It is OCPF's opinion that an organization which solicits any money or other thing of value for political purposes is functioning as a political committee and must properly register as such. Organizations which only make expenditures of \$15,000 or 10 percent of their previous year's gross revenues, whichever is less, for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party are considered political committees in certain respects. Organizations making ballot question expenditures only are also treated differently by OCPF. See OCPF-IB-88-01.

the public employee could still speak unless there was a direct connection between the public employee's participation, the meeting notice (e.g., the solicitation) and the payment of dues to defeat the ballot question. For example, if the notice mentions that a portion of dues will be used to oppose the ballot question or if the association expends more than the lesser of ten percent of its annual budget or \$15,000 to support the ballot question or other "political purposes," a public employee's participation as a speaker would be considered an indirect solicitation for a political purpose.

Example C2: A high school PTO sends out a flier announcing that a state commissioner will be speaking on drug abuse at the PTO's next meeting. Last year the PTO spent \$150 (less than that 10 percent of its annual budget) to buy an ad using dues money to encourage the public to vote "Yes" on a 2 1/2 override ballot question. The PTO also holds "candidate nights."

The public employee speaking at this meeting would not be in violation of M.G.L. c.55, s.13. A PTO is primarily a civic organization (unless it in fact has solicited funds to support or oppose a ballot question, in which case it should have registered as a political committee). In addition, the mere fact that the PTO made an incidental expenditure for a political purpose (e.g., the advertisement urging a "Yes" vote) in a prior year is insufficient to establish a material connection between the public employee's participation, a solicitation (even assuming the flyer was part of a membership drive effort) and a political purpose. Finally, a "candidate's night" providing equal access to all is a civic rather than a political event.

Example C3: A key legislative aide is asked to speak to a non-profit environmental advocacy organization. Notice of the speech is circulated and the fact of the aide's speaking is used to increase membership in the organization. Later, the organization's membership list is sold to a political committee supporting an environmental group's ballot initiative. In addition, the organization contributes incidental funds, partly derived from membership dues, to the political committee.

The non-profit corporation is a civic organization and, therefore, the public employee has not violated section 13 merely because the non-profit's membership list is used by the political committee. Even though the political committees may have similar names, they are separate legal entities. If, however, the organization's primary purpose in holding the meeting was to develop a list for a political committee and the public employee knew of this purpose, then he or she would be in violation of section 13 since there would be a material connection between his or her participation as featured speaker, the solicitation and the political purpose.

III. Public Employee's Responsibility

It is clear from the above discussion that it is not always easy to determine the appropriateness of a public employee's accepting a speaking engagement. However, OCPF believes that public employees have a responsibility to use reasonable care regarding speaking engagements to insure that they are not knowingly participating in a fundraising event or permitting their participation in such an event to be used for political fundraising purposes. Therefore, OCPF suggests that public employees ask organizations a few basic questions regarding the organization and the event prior to accepting a speaking engagement.

A. Is the organization a political committee or does it make more than "incidental" (e.g., more than the lesser of ten percent of its annual budget or \$15,000) contributions and expenditures which have a political purpose? If it is such an organization, will any fundraising occur at the event or prior to the event through membership dues for some sort of club or council? Will the public employee's name be used for other fundraising purposes such as to draw people to an event for the purpose of subsequently targeting them for political fundraising? If the answer is "Yes" to any of these questions, OCPF would advise the public employee to decline the invitation or seek further guidance from OCPF.

B. Is the organization a civic or humanitarian organization? If it is and it makes no political contributions or expenditures, then the public employee may accept a speaking engagement without fear of violating section 13.

C. Is the organization a civic organization which makes incidental (as defined above) or occasional political contributions or expenditures? If so, is there a direct connection between the public employee's participation at the event, any solicitation which has occurred or may occur and the political contributions or expenditures made or planned by the organization? If the answer to this last question is "Yes," OCPF would advise the public employee to decline the invitation. If the answer is "No," the employee would be able to accept the invitation.

OCPF believes that answering these questions will generally clarify whether a public employee's participation at an event as a featured speaker or panelist complies with the requirements of the campaign finance laws. Of course, in unusual situations, OCPF is available to offer additional advice and guidance.

IV. Political Committee/Organization's Responsibility

Clearly, it is the public employee who runs the risk of violating section 13 for indirectly soliciting funds for

political purposes by attending an event as a featured speaker or panelist. It is important to note, however, that individuals, political parties and political committees who use a public employee's name to solicit contributions may be in violation of the campaign finance laws or other laws.

M.G.L. c.55, s.7 provides, in pertinent part, that:

No person or combination of persons including a corporation formed under the provisions of chapter one hundred and eighty, shall in connection with any nomination or election receive money or its equivalent, expend or disburse or promise to expend or disburse the same, except as authorized by this chapter (emphasis added).

In OCPF's opinion, the use of a public employee's name to solicit funds for political purposes violates the prohibition of section 7.

The Anderson case recognized that M.G.L. c.55 is a comprehensive set of laws that was intended to govern all campaign finance activity. In that case, the Court concluded that even activity which was not expressly permitted was prohibited (e.g., expenditure of municipal funds for supporting, opposing or seeking to influence a ballot question). Therefore, since a public employee may not directly or indirectly solicit political contributions, neither may a political committee receive or expend funds by soliciting political contributions in a manner implying a public employee's support for such solicitation. In addition, M.G.L. c.56, 41A provides:

No person shall, in order to promote his success or the success of another candidate for nomination or election to any public office, or in connection with any question submitted to the voters, include or cause to be included in any political advertisement, circular, poster or publication, the name of any person as an endorser or supporter except with the express consent of such person.

Violation of either M.G.L. c.55, s.7 or c.56, s.41A is a serious criminal offense punishable by fine or imprisonment.

In conclusion, public employees, political committees and other organizations should exercise reasonable care to assure that the fact of a public employee's participation at an event as a featured speaker or panelist is not used directly or indirectly to solicit funds for political purposes.

For further information and/or guidance with respect to specific questions involving public employees' campaign finance activities or other campaign finance matters, please write OCPF at One Ashburton Place, Room 411, Boston, MA 02108 or call at 1-800-462-OCPP or 1-617-727-8352.

